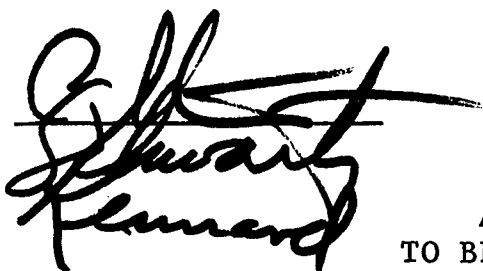


By:



S.B. NO. 894

A BILL
TO BE ENTITLED

AN ACT amending Section 8 of the Local Sales & Use Tax Act, as amended (codified as Article 1066c, Vernon's Texas Civil Statutes), to provide for the retaining and use by the state of a city's share of the local sales and use tax for purposes related to achieving compliance with the Texas Water Quality Act and the waste discharge permits, rules and orders applicable to the city issued under that Act; declaring this Act to be cumulative of other laws on the same subject; providing for severability; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Section 8 of the Local Sales and Use Tax Act, as amended (codified as Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 8. TRANSMISSION OF REVENUES; DEDUCTIONS; RETENTION OF REVENUES; REFUNDS; CLOSING OF ACCOUNTS; WITHHOLDING OF REVENUES ON CERTIFICATION OF TEXAS WATER QUALITY BOARD. (a) Except as provided in the other Subsections of this section, each city's share of all local sales and use tax collected under this Act by the Comptroller shall be transmitted to the Treasurer or the officer performing the functions of such office of such city by the Comptroller payable to the city periodically as promptly as feasible. Transmittals required under this Act shall be made at least twice in each State fiscal year. The funds so transmitted may be used by the city for any purpose for which the general funds of the city may be used. Before transmitting such funds, the Comptroller shall deduct two percent (2%) of the sum collected from each such city during such period as a charge by the State of Texas for its services specified in this Act, and the amounts so deducted, subject to the provisions of Section 7B of this Act, shall be deposited

by the Comptroller in the State Treasury to the credit of the General Revenue Fund of the State. The Comptroller is authorized to retain in the suspense account of any city a portion of the city's share of the tax collected under this Act. Such balance so retained in the suspense account shall not exceed five percent (5%) of the amount remitted to the city. The Comptroller is authorized to make refunds from the suspense account of any city for overpayments made to such accounts, and to redeem dishonored checks and drafts deposited to the credit of the suspense accounts of such cities. When any city shall adopt the Local Sales and Use Tax, and shall thereafter abolish such tax, the Comptroller may retain in the suspense account of such city for a period of one year five percent (5%) of the final remittance to each such city at the time of termination of collection of such tax in such city to cover possible refunds for overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the effective date of abolition of such tax in such city, the Comptroller shall remit the balance in such account to the city and close the account.

"(b) Whenever the Texas Water Quality Board, after a public hearing as provided in Subsection (e) of this section, finds that in its judgment a city is either not complying or not making progress satisfactory to the Board toward complying with the Texas Water Quality Act or any waste discharge permit, rule or other order of the Board applicable to the city issued under that Act, the Board may enter an order certifying this fact to the Comptroller and specifying the effective date of the order. Upon receipt of a certification order, the Comptroller shall deposit and retain in the suspense account of that city all of the city's share of the

local sales and use tax collected or recovered under this Act by the Comptroller from and after the date on which the certification order by the Texas Water Quality Board is received by the Comptroller, or from and after the date specified by the Board in the certification order as being the effective date, whichever is the later date. At any time after the date on which the Comptroller is required to commence retaining the city's share of the local sales and use tax pursuant to a certification order, the Texas Water Quality Board, on its own motion or on request of the city, and after a public hearing as provided in Subsection (e) of this section, may enter an order notifying the Comptroller, if the Board so finds, that the city is complying with or making progress satisfactory to the Board toward complying with the Texas Water Quality Act and the waste discharge permits, rules and other orders of the Board applicable to the city issued under that Act. Upon receipt of the notice of compliance, the Comptroller shall transmit to the Treasurer or the officer performing the functions of the Treasurer of the city, in accordance with the procedures and subject to the conditions specified in Subsection (a) of this section, the share of the city's local sales and use tax retained in the suspense account of the city pursuant to the certification order issued by the Texas Water Quality Board.

"(c) If within one year after the date on which the Comptroller commences retaining the city's share of the local sales and use tax pursuant to a certification order, the Texas Water Quality Board has not entered an order notifying the Comptroller that the city is in compliance, the Board, after a public hearing as provided in Subsection (e) of this section, may enter an order vesting itself with the power specified herein and directing the Comptroller to transfer to the Board the city's share of the local sales and use tax then on hand in the suspense account of the city, or thereafter collected or recovered under this Act, after making the deductions for collecting the tax and the retainages for overpayments and dishonored checks and drafts as authorized in Subsection (a) of this Section. The Comptroller shall transfer the funds pursuant to the order, and the funds so transferred are hereby appropriated to the Board for the purposes authorized in this Section 8. Upon the entry of the order, the Board is empowered to exercise any or all of the powers, functions and procedures, whether governmental, discretionary, ministerial, legislative, judicial, administrative, or otherwise, which the city could exercise in order to comply with the Texas Water Quality Act and the waste discharge permits, rules, and other orders of the Board applicable to the city issued under that Act, including the power to construct, maintain and operate, and to contract for the construction, maintenance and operation of the city's sewer system, treatment facilities, and disposal systems. All expenses incurred by the Board directly attributable to exercising this power shall be paid out of the city's share of the local sales and use tax transferred to the Board by the Comptroller. In exercising this power, but only to the extent this power is exercised, the Board stands for all purposes in the place and may act in the name of the city,

its governing body and executive officers, and any other officer, employee or agent of the city whose duties and authority fall within the scope of the powers, functions, and procedures exercised by the Board. However, the governing body, the executive officers, and the other officers, employees, and agents of the city are not divested of, but continue in, their respective offices and positions. They are subject to and shall comply with the orders, directives, and other instructions of the Board and its authorized representatives, and shall cooperate with the Board and its authorized representatives in effectuating the actions taken by the Board to achieve compliance. Also, the Board may delegate to the executive director and any other officers, employees, or agents of the Board the authority to exercise the power and to implement and execute the order under such terms and conditions as the Board may specify.

"(d) At any time and from time to time after the Board has entered an order invoking the power granted in Subsection (c) of this section, the Board may:

"(1) amend or modify the order in any particular as may be necessary or desirable in the judgment of the Board to facilitate the administration of the order;

"(2) suspend the order or the operation and effect of the order, in whole or in part, either indefinitely or for a stated period of time, during which period the powers, functions, and procedures of the city to which the suspension applies, as designated by the Board, shall be relinquished and restored to the city; or

"(3) after a public hearing as provided in Subsection (e) of this section, terminate the order and the Board's authority thereunder whenever in the judgment of the Board the city is

complying or is making progress satisfactory to the Board toward complying with the Texas Water Quality Act and the waste discharge permits, rules, and other orders of the Board applicable to the city issued under that Act; when the order and the Board's authority under the order are terminated, all of the powers, functions, and procedures of the city which had been exercised by the Board under the order shall be relinquished and restored to the city, and any of the city's share of the local sales and use tax remaining on hand shall be transferred by the Board to the city; upon receipt of notice that the Board has terminated the order and the Board's authority thereunder, the Comptroller shall transmit to the Treasurer of the city or the officer performing the functions of Treasurer the city's share of local sales and use tax collected under this Act by the Comptroller then on hand or thereafter collected, in accordance with the procedures and subject to the conditions specified in Subsection (a) of this section.

"(e) All public hearings required to be held by the Texas Water Quality Board under this Section 8 shall be conducted in accordance with the hearing procedure authorized and prescribed in the Texas Water Quality Act, and notice of the hearing shall be given to the city which is the subject of the hearing and to the Comptroller."

Section 2. ACT CUMULATIVE. This Act is cumulative of and supplemental to any other laws and parts of laws relating to the same subject and does not repeal those other laws or parts of laws.

Section 3. SEVERABILITY CLAUSE. The provisions of this Act are severable. If any word, phrase, clause, sentence, section, provision, or part of this Act should be held to be invalid or unconstitutional, it shall not affect the validity of the remaining

portions, and it is hereby declared to be the Legislative intent that this Act would have been passed as to the remaining portions, regardless of the invalidity of any part.

Section 4. EMERGENCY CLAUSE. The importance to the public of the amendments in this Act creates an emergency and an imperative public necessity demanding the suspension of the Constitutional Rule requiring bills to be read on three several days in each House, and the same is hereby suspended; and this Act shall take effect and be in force from and after its passage, and it is so enacted.

Austin, Texas

April 26, 19 71

Honorable Ben Barnes
President of the Senate

Sir:

We, your Committee on Water and Conservation,
to which was referred S. B. No. 894, have had the same under
consideration, and I am instructed to report it back to the Senate
with the recommendation that it do not pass, but that the
Committee Substitute adopted in lieu thereof do pass and be
printed.



Chairman Creighton

CAS

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 894

A BILL
TO BE ENTITLED

AN ACT relating to the retaining and use by the state of a portion of a city's share of the local sales and use tax for purposes related to achieving compliance with the Texas Water Quality Act and the waste discharge permits, rules and orders applicable to the city issued under that Act; amending Section 8 of the Local Sales & Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes); declaring this Act to be cumulative of other laws on the same subject; providing for severability; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Section 8 of the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 8. TRANSMISSION OF REVENUES; DEDUCTIONS; RETENTION OF REVENUES; REFUNDS; CLOSING OF ACCOUNTS; WITHHOLDING OF REVENUES ON CERTIFICATION OF TEXAS WATER QUALITY BOARD. A. Except as provided in the other Subsections of this section, each city's share of all local sales and use tax collected under this Act by the Comptroller shall be transmitted by the Comptroller to the Treasurer of the city or the officer performing the functions of that office, payable to the city periodically as promptly as feasible. Transmittals required under this Act shall be made at least twice in each state fiscal year. The funds so transmitted may be used by the city for any purpose for which the general funds of the city may be used. Before transmitting the funds, the Comptroller shall deduct two per cent (2%) of the sum collected from the city during such period as a charge by the state for its services specified in this Act, and the amounts so deducted, subject to the provisions of Section 7B of this Act, shall be deposited by the Comptroller in the State Treasury to the credit of the General

Revenue Fund of the state. The Comptroller is authorized to retain in the suspense account of any city a portion of the city's share of the tax collected under this Act. The balance so retained in the suspense account shall not exceed five percent (5%) of the amount collected from the city. The Comptroller is authorized to make refunds from the suspense account of any city for overpayments made to such accounts, and to redeem dishonored checks and drafts deposited to the credit of the suspense account of the city. When any city shall adopt the Local Sales and Use Tax, and shall thereafter abolish the tax, the Comptroller may retain in the suspense account of that city for a period of one year five percent (5%) of the final remittance to that city at the time of termination of collection of the tax in that city to cover possible refunds for overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of the suspense account. After one year has elapsed after the effective date of abolition of the tax in that city, the Comptroller shall remit the balance in the suspense account to the city and close the account.

"B. Whenever the Texas Water Quality Board, after a public hearing as provided in Subsection F of this section, finds that in its judgement a city is either not complying or not making progress satisfactory to the Board toward complying with the Texas Water Quality Act or any waste discharge permit, rule or other order of the Board applicable to the city issued under that Act, the Board may enter an order certifying this fact to the Comptroller and specifying the effective date of the order (hereafter in this section referred to as a 'certification order'). Upon receipt of a certification order, the Comptroller shall deposit and retain in the suspense account of that city twenty-five percent (25%)

of the city's share of the local sales and use tax collected or recovered under this Act by the Comptroller from and after the date on which the certification order by the Texas Water Quality Board is received by the Comptroller, or from and after the date specified by the Board in the certification order as being the effective date, whichever is the later date. This amount of twenty-five percent (25%) shall be in addition to the amounts authorized to be retained in the suspense account under Subsection A of this section. After making deductions and retainages authorized in Subsection A of this section and after making the twenty-five percent (25%) retainage authorized in this subsection, the Comptroller shall transmit the balance of the city's share of the local sales and use tax so collected or recovered to the Treasurer of the city or the officer performing the functions of that office in accordance with the procedures and subject to the conditions specified in Subsection A of this section.

"C. At any time after the date on which the Comptroller is required to commence retaining the twenty-five percent (25%) of the city's share of the local sales and use tax pursuant to a certification order, the Texas Water Quality Board, on its own motion or on request of the city, and after a public hearing as provided in Subsection F of this section, may enter an order notifying the Comptroller, if the Board so finds, that the city is complying with or making progress satisfactory to the Board toward complying with the Texas Water Quality Act and the waste discharge permits, rules and other orders of the Board applicable to the city issued under that Act (hereafter in this section referred to as a 'notice of compliance'). Upon receipt of the notice of compliance, the Comptroller shall transmit to the Treasurer of the city or the officer performing the functions of that office, in

accordance with the procedures and subject to the conditions specified in Subsection A of this section, all of the city's share of the local sales and use tax retained in the suspense account of the city pursuant to the certification order issued by the Texas Water Quality Board or thereafter collected or recovered under this Act by the Comptroller.

"D. If within one year after the date on which the Comptroller is required to commence retaining the twenty-five percent (25%) of the city's share of the local sales and use tax pursuant to a certification order, the Texas Water Quality Board has not issued a notice of compliance, the Board, after a public hearing as provided in Subsection F of this section, may enter an order vesting itself with the power specified in this subsection and directing the Comptroller to transfer to the Board the twenty-five percent (25%) portion of the city's share of the local sales and use tax then on hand in the suspense account of the city or thereafter collected or recovered under this Act. The Comptroller shall transfer the funds pursuant to the order, and the funds so transferred are hereby appropriated to the Board for the purposes authorized in this subsection. Upon the entry of the order, the Board is empowered to exercise any or all of the powers, functions and procedures, whether governmental, discretionary, ministerial, legislative, judicial, administrative, or otherwise, which the city could exercise in order to comply with the Texas Water Quality Act and the waste discharge permits, rules, and other orders of the Board applicable to the city issued under that Act, including the power to construct, maintain and operate, and to contract for the construction, maintenance and operation of the city's sewer system, treatment facilities, and disposal

systems. All expenses incurred by the Board directly attributable to exercising this power shall be paid out of the twenty-five percent (25%) portion of the city's share of the local sales and use tax transferred to the Board by the Comptroller. In exercising this power, but only to the extent this power is exercised, the Board stands for all purposes in the place and may act in the name of the city, its governing body and executive officers, and any other officer, employee or agent of the city whose duties and authority fall within the scope of the powers, functions, and procedures exercised by the Board. However, the governing body, the executive officers, and the other officers, employees, and agents of the city are not divested of, but continue in, their respective offices and positions. They are subject to and shall comply with the orders, directives, and other instructions of the Board and its authorized representatives, and shall cooperate with the Board and its authorized representatives in effectuating the actions taken by the Board to achieve compliance. The Board may delegate to the executive director and any other officers, employees, or agents of the Board the authority to implement and execute the order invoking the power authorized in this subsection and to exercise that power under such terms and conditions as the Board may specify.

"E. At any time and from time to time after the Board has entered an order invoking the power granted in Subsection D of this section, the Board may:

"(1) amend or modify the order in any particular as may be necessary or desirable in the judgement of the Board to facilitate the administration of the order;

"(2) suspend the order or the operation and effect of the order, in whole or in part, either indefinitely or for a stated period of time, during which period the powers, functions,

and procedures of the city to which the suspension applies, as designated by the Board, shall be relinquished and restored to the city; or

"(3) after a public hearing as provided in Subsection F of this section, terminate the order and the Board's authority thereunder whenever in the judgement of the Board the city is complying or is making progress satisfactory to the Board toward complying with the Texas Water Quality Act and the waste discharge permits, rules, and other orders of the Board applicable to the city issued under that Act.

"When the order and the Board's authority under the order are terminated, all of the powers, functions, and procedures of the city which had been exercised by the Board under the order shall be relinquished and restored to the city, and any of the city's share of the local sales and use tax remaining on hand shall be transferred by the Board to the city. Upon receipt of notice that the Board has terminated the order and the Board's authority thereunder, the Comptroller shall transmit to the Treasurer of the city or the officer performing the functions of that office all of the city's share of local sales and use tax collected under this Act by the Comptroller then on hand or thereafter collected, in accordance with the procedures and subject to the conditions specified in Subsection A of this section.

"F. All public hearings required to be held by the Texas Water Quality Board under this Section 8 shall be conducted in accordance with the hearing procedure authorized and prescribed in the Texas Water Quality Act, and notice of the hearing shall be given to the city which is the subject of the hearing and to the Comptroller. Appeals from any ruling, order, decision, or other action of the Board under this Section 8 are governed by the pro-

visions of Subchapter F of the Texas Water Quality Act.

"G. As used in Subsection D of this section, the terms 'sewer system', 'treatment facilities', and 'disposal systems' have the same meanings as these terms are given in the Texas Water Quality Act."

Section 2. ACT CUMULATIVE. This Act is cumulative of and supplemental to any other laws and parts of laws relating to the same subject and does not repeal those other laws or parts of laws.

Section 3. SEVERABILITY CLAUSE. The provisions of this Act are severable. If any word, phrase, clause, sentence, section, provision, or part of this Act should be held to be invalid or unconstitutional, it shall not affect the validity of the remaining portions, and it is hereby declared to be the Legislative intent that this Act would have been passed as to the remaining portions, regardless of the invalidity of any part.

Section 4. EMERGENCY CLAUSE. The importance to the public of the amendments in this Act creates an emergency and an imperative public necessity demanding the suspension of the Constitutional Rule requiring bills to be read on three several days in each House, and the same is hereby suspended; and this Act shall take effect and be in force from and after its passage, and it is so enacted.

BILL ANALYSIS

BACKGROUND INFORMATION:PURPOSE OF THE BILL:

To provide for the retention and use by the Texas Water Quality Board of a city's share of the local sales and use tax to achieve compliance with the Water Quality Act, if such city fails to comply under its own direction.

SECTION BY SECTION SUMMARY:

Section 1: Amends Section 8 of Article 1066c, V.T.C.S. (The Local Sales and Use Tax Act).

Section 8. (a) Is the present Section in its entirety, changed only by the addition of the following preface: 'except as provided in other Subsections of this Section'.

(b) New provision. When the Water Quality Board, finds that a city is not complying with the Water Quality Act, with any waste discharge permit, or with a Board rule or order, the Board may by order certify this fact to the Comptroller. On receipt of such an order, the Comptroller shall deposit in that city's suspense account all of the city's share of local sales and use tax collected after the date of receipt of the order. At any time thereafter, the Board after a public hearing may notify the Comptroller that the city is in compliance. On receipt of such notification, the Comptroller will transmit to the city its share of the city's local sales and use tax from the suspense account.

(c) If within one year after the Comptroller's receipt of the original order the city is not in compliance, the Board after a public hearing, may direct the Comptroller to transfer to the Board the city's share of the local sales and use tax on hand in the city's suspense account, after deductions for collecting the tax and retainages for overpayment and dishonored checks. The Board may exercise all powers which the city could exercise in order to comply with the Water Quality Act and waste discharge permits and rules of the Board issued under that Act. All expenses incurred by the Board in obtaining compliance for the city shall be paid from the city's share of the local sales and use tax transferred to the Board by the Comptroller. When the order is terminated, the powers shall be restored to the city, and any remaining portion of the tax shall be returned to the city.

(e) New provision. All hearings shall be held according to the hearing procedure prescribed in the Water Quality Act.

Section 2: Act cumulative of other laws relating to the subject.

Section 3: Severability clause.

Section 4: Emergency clause.

By Freight
Schmidt

To provide for the retaining and use by the state of a city's share of the local sales and use tax for purposes related to achieving compliance with the Texas Water Quality Act and the waste discharge permits, rules and orders applicable to the city issued under that Act; and declaring an emergency.

Constitutional Rule (Sec. 5, Art. III) and Senate Rule 103 suspended by vote of 29 yeas, 0 nays, to introduce bill.

MAR 31 1971 Filed with the Secretary of the Senate
Read, referred to Committee on Water and Conservation

Reported favorably.

APR 26 1971 Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed.

Senate and Constitutional Rules to permit consideration suspended by
{ unanimous consent.
_____ yeas, _____ nays.

To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of _____ yeas, _____ nays.

Read second time and { ordered engrossed.
passed to third reading.

Caption ordered amended to conform to body of bill.

Senate and Constitutional 3-Day Rules suspended by vote of _____ yeas, _____ nays to place bill on third reading and final passage.

Read third time and passed by { a viva-voce vote.
_____ yeas, _____ nays.

OTHER ACTION:

Secretary of the Senate

Engrossed
Sent to HOUSE

ENGROSSING CLERK